CALIFORNIA DEPARTMENT OF EDUCATION

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SACRAMENTO, CA
95814-5901

JACK O'CONNELL
State Superintendent of Public Instruction
PHONE: (916) 319-0800

FILE

RECEIVED
NOV 1 3 2006
By ________

Date November 7, 2006

Second Amended Compliance Complaint Report

Steven Wyner
970 West 190th Street, Suite 302
Torrance, CA 90502

Carl Cohn, Superintendent
San Diego City Unified School District
4100 Normal Street
San Diego, CA 92103-2682

Marilyn Wheeler, Superintendent
Coronado Unified School District
555 D Avenue
Coronado, CA 92118-1714

Dear Steven Wyner and Superintendent Cohn:

Subject: **Case # S-0082-06/07**
STUDENT NAME: Tyler Brenneise

The California Department of Education (CDE), Special Education Division (SED), has completed the investigation of the above complaint received on August 3, 2006, in which it was alleged that the San Diego City Unified School District violated federal and state laws and regulations pertaining to the education of students with disabilities.

The investigation process included interviews and a review of all materials submitted by all parties. Attached is the Evidentiary Summary with the relevant citations and findings.

- ☐ The investigation findings indicated that the Complainant and District reached a mutually agreed to local resolution to the complaint allegation(s).
- ☒ The investigation findings support compliance.
- ☒ The investigation findings support the allegations of noncompliance.
- ☒ Violations of federal or state laws and regulations require corrective actions that are included in the enclosed Evidentiary Summary.
- ☒ Evidence of required corrective actions, or questions regarding corrective actions, shall be sent directly to:

Ralph Scott, Administrator
Focused Monitoring & Technical Assistance Unit One
California Department of Education
1430 N Street, Suite 2401
Sacramento, CA 95814
(916) 324-8898 Phone
(916) 445-6803 Fax

If you have questions regarding the corrective actions, please contact the administrator listed above. If compliance was determined in this investigation and no corrective actions are required, consider this case closed.

Discretionary Reconsideration or Appeal of State Department of Education (SDE) Investigation Report (California Code of Regulations, Title 5, Section 4665)

Within 35 days of receipt of the Department investigation report, either party may request reconsideration by the Superintendent. The Superintendent may, within 35 days of receipt of the request, respond in writing to the parties either modifying the conclusions or required corrective actions of the Department report or denying the request outright. During the pending of the Superintendent's reconsideration, the Department report remains in effect and enforceable.

If you have any questions regarding this report, please contact Complaints Management and Mediation Unit at (916) 445-4632.

Sincerely,

Salif Roz for

Mary Hudler, Director
Special Education Division

MJH:am

Enclosure

cc: Patrick Frost, Assistant General Council, Due Process Hearings and Mediation, San Diego City Unified School District
Carolyn Nunes, Director, San Diego City Unified Special Education Local Plan Area

CALIFORNIA DEPARTMENT OF EDUCATION
COMPLIANCE INVESTIGATION CASE S-0082-06/07
EVIDENTIARY SUMMARY
~~AMMENDED~~ AMENDED

Steven Wyner
(Complainant/Attorney)

Tyler Brenneise
(Student)

Chris Calhoun
(Investigator)

San Diego City Unified School District
(Public Education Agency)

4100 Normal Street
San Diego, CA 92103-2682
(Address)

Carl Cohn
(Superintendent)

San Diego
(County)

Coronado Unified School District
(Public Education Agency)

555 D Avenue
Coronado, CA 92118-1714
(Address)

Marilyn Wheeler
(Superintendent)

San Diego
(Couunty)

ALLEGATIONS:	CITATIONS:
1) Failure to implement the individualized education program (IEP) of June 19, 2006 (Phenylketonuria (PKU) training for all staff, behavioral aides allowing access to the sensory room, accommodations and supports, Adaptive PE, placement, daily logs, transportation) **Amended Allegation**	Title 34, *Code of Federal Regulations* (34 *CFR*) Section (§) 300.350(a)(1)

2) Failure to provide prior written notice when initiating, changing or refusing identification, evaluation, educational placement or provision of free and appropriate public education (FAPE)	34 *CFR* § 300.503(a)(1)
3) Failure to have special day class (SDC) taught by appropriately credentialed teacher with necessary competencies to teach individuals assigned to the class	Title 5 *California Code of Regulations* (5 *CCR*) § 3053(c)
4) Failure to convene a manifestation determination within 10 days of any decision to change the placement of a child with a disability	Title 20 *United States Code* (20 *USC*) § 1415(k)(1)(E)

This second amended report is being amended to correct several errors. Deleted items will appear with a strikethrough. Added items will appear in bold.

This report has been amended to reflect changes in the required corrective actions. Deleted items will appear with a strikethrough. Added items will appear in bold.

Allegation one was amended to more accurately reflect the allegation regarding placement. The additional allegation regarding transportation was added by the Complainant.

The report will refer to San Diego City Unified School Unified as the "District of Residence" and Coronado Unified School District as the "District of Placement."

BACKGROUND INFORMATION

The District of Residence began an Extended School Year (ESY) IEP on June 19, 2006, and finalized the IEP on July 17, 2006, without the District of Placement in attendance. The student began the ESY on July 20, 2006, and was told he could not return to school by the District of Placement on July 26, 2006. The IEP end date was on August 3, 2006.

On September 14, 2006, a telephone conference interview was conducted with the Complainant and parent. Allegations were discussed that confirmed the information expressed in the written complaint.

On September 18-20, 2006, an on-site investigation was conducted by the Complaint investigator and two additional CDE representatives from the Focused Monitoring and

Technical Assistant Unit. District staff, teachers, and administrators were interviewed at the District of Residence and the District of Placement.

ALLEGATION ONE

Evidentiary Findings of Fact:

PKU training for all staff

1. The Complainant alleges in the July 31, 2006, complaint letter that,

   The PKU Training required, by [student's] 2006 ESY IEP was not provided to all persons required, and the training was not provided by the required PH-DIS [Physical and Health Disabilities] Specialized Heath Care Services pursuant to the March 2003 PKU Agreement and Corrective Actions required by the CDE [California Department of Education].

2. The District of Residence's September 7, 2006, response states,

   The District fulfilled its obligation under the agreement and [student's] ESY IEP by providing PKU training at [school site in the Receiving District], to staff there, on July 13, July 14 and July 21, 2006 . . . The training on July 13 was given by two Special Education Itinerant Nurses . . . The additional trainings on July 14 and July 21 were given by [nurse's name], RN. All are qualified, licensed medical professionals. [Student's] general education teacher . . . Case Manager . . . administrator . . . nurse . . . OT all attended the training on July 13 . . . Special Education teacher, attended the training on July 14 . . . Summer School Principal . . . substitute school nurse . . .campus security aide . . . case manager, all attended the PKU training on July 21. An additional training was scheduled to train [student's] APE teacher who had not begun serving [student] yet; however the training never took place because the trial placement ended.

3. The District of Placement's September 25, 2006, response states,

   . . . regarding PKU training for the [District of Placement] staff, the following staff received PKU training from SDUSD' staff on the following dates: July 13-General Education Teacher . . . Director of Special Education . . . Nurse . . . District's Occupational Therapist . . . July 14-Special Education Teacher . . . July 21-[District of Placement] Principal for Summer School . . . Substitute School Nurse . . . Campus Security Aide . . .

4. The student's June 19, 2006, ESY IEP, reveals on page 10, "transition activities" that reference the PKU training as,

> Health/Safety training will be provided for summer school staff at [District of Placement] to include [student's] teachers, school nurse, District DIS Providers and Case manager prior to [student's] entrance into school.

5. The student's first day of school at the District of Placement was July 20, 2006.

6. Page 38 of the student's June 19, 2006, ESY IEP records, "Specialized Physical Health Care services: PKU training for all staff having contact with [student]."

7. A paper with signatures from the District of Placement's staff was submitted with no dates or any reference regarding training.

Conclusion:

The District of Residence did not meet the requirements of 34 *CFR* § 300.350(a)(1). The District of Residence did not provide evidence PKU training was given to all of the District of Placement's staff prior to the student's entrance into school on July 20, 2006, as mandated by the student's June 19, 2006, ESY IEP.
The District of Residence is out of compliance.

The student's IEP does not indicate the District of Placement attended the student's IEP, therefore the District of Residence, which conducted the June 19, 2006, IEP was responsible for the PKU training of the school staff prior to the student's entrance into the District of Placement's school on July 20, 2006.
The District of Placement is in compliance.

Behavioral aides allowing access to the sensory room

8. The Complainant alleges in the July 31, 2006, complaint letter that the, "[Acting principal] and the classroom teacher prevented implementation of [student's] IEP, by preventing the NPA behavioral aides from allowing [student] access to the 'Sensory Room' (which was kept locked) for breaks pursuant to his IEP . . ."

9. The District of Residence's September 7, 2006, response states that,

> [Student's] IEP did not call for access to a sensory room, thus the District is unaware what portion of [student's] IEP Parent is alleging was not implemented by lack of access to the sensory room.[Student's] IEP called for breaks when needed, but did not mandate where such breaks were to be taken. [Student] was given breaks whenever necessary. In addition . . . [Student] had access to sensory devices (e.g. figits) in the classroom, but

> there was no 'sensory area' in the classroom . . . There was also an OT room at [school], to which [student] was provided access for sensory breaks . . . the OT room was limited to the times the OT was there until the summer school principal was able to obtain a key to the room . . .

10. The District of Placement's September 25, 2006, response states that,

> . . . Access to the sensory room is not a provision of Student's IEP. Student was allowed breaks when needed, and was provided with sensory activities throughout his day. Additionally, Student was provided with access the sensory room on all but one of the days that he attended the [District of Placement's school] . . . Student was still provided with sensory activities and breaks as needed.

11. The student's June 19, 2006, ESY IEP, identifies a "sensory motor" goal on page three, but does not delineate the use of a "sensory room."

12. The investigator's September 28, 2006, telephone interview with the student's aide, who worked with student on July 20 and 25, 2006, revealed the aide was able to access the sensory room. She stated she didn't use it and there was one day a key was not available.

Conclusion:

The District of Residence met the requirements of 34 *CFR* § 300.350(a)(1).The student's June 19, 2006, ESY IEP did not establish the need for a sensory room. **The District of Residence is in compliance.**

The District of Placement met the requirements of 34 *CFR* § 300.350(a)(1). The student's June 19, 2006, ESY IEP did not establish the need for a sensory room. **The District of Placement is in compliance.**

Accommodations and Supports

13. The Complainant alleges in the July 31, 2006, complaint letter that, "The accommodations and supports in [student's] IEP were not fully implemented, which exacerbated [student's] behavior, thus sabotaging [student's] educational program at [District of Placement's school]."

14. The District of Residence's September 7, 2006, response states that,

> The District provided all accommodations and supports per [student's] ESY IEP. Case Manager, [name], met with [student's] [District of Placement's school] staff regarding [student's] IEP and its implementation when he began school. In addition, [Case Manager] attended school with

[student] for the entire time he was placed there to ensure implementation of his IEP, including accommodations and supports.

15.The District of Placement's September 25, 2006, response states that,

> . . . during Student's 6 days at the [District of Placement's school], he was provided with all of the accommodations and supports listed on pages 5 and 7 of his IEP that were appropriate for the activities that he participated in. The compliance complaint refers to a July 24, 2006, letter from [parent] as documentation supporting the fact that Student was not provided with the accommodations and supports listed in his IEP. However, the accommodations and supports referenced in [parent's] letter are not those from his IEP . . .

16. The student's June 19, 2006, ESY IEP, "Supports for Instruction" identifies,

> Presentation: directions given in a variety of ways, highlighted texts, modified curriculum, modified tests, oral tests, reduced paper/pencil tasks, repeated review/drill, short-answer tests, shortened assignments, taped lectures
>
> Setting/response: increased verbal response time, preferential seating
>
> Timing/Scheduling: extended time for completing assignments, extended time for completing tests, frequent breaks
>
> Use of Aids or Tools: calculator

17. The case manager's July 20, 2006, log to the parent reveals student participated in some group activities, 1:1 time on computer and given "several breaks."

18. The parent's July 24, 2006, letter to the case manager states the student's accommodations of a "word bank," visual/mind-mapping," short phrases, and pairing longer auditory directions with VISUALS," should be in place for the student.

19. The District of Residence's July 20, 2006, documents show that the District of Placement received assistive technology materials for the student which included: IBM Thinkpad R40, Epson Perfection 124OU Scanner, Intellitools Classroom Suite 3 (Intellitalk 3, Intellimathics 3, Intellipics 3), Kurzweil 300 Professional v.9, Organizational software, and a Talking word processor with symbols.

20. The investigator's September 19, 2006, on-site interviews and observations of the classroom with the District of Placement's administrator and teacher, indicate that the following accommodations were implemented: overheads used for visual aids, no textbooks used, individualized writing programs, no exams given, assignments

shortened, breaks given every 15 minutes, work given on a computer, assignments reviewed, aides used to explain assignments, FM trainer, AT assistance and extra software loaded in student's computer.

21. The investigator's September 28, 2006, telephone interview with the student's ESY aide, revealed the aide answered student's questions, was allowed to leave classroom at any time, had access to computer.

Conclusion:

The District of Residence met the requirements of 34 *CFR* § 300.350(a)(1). The District of Residence provided the accommodations and supports in the student's June 19, 2006, ESY IEP, as evidenced in the use of overheads used for visual aids, individualized writing programs, no exams, assignments shortened, breaks given every 15 minutes, work given on a computer, FM trainer, AT assistance and extra software loaded in student's computer. **The District of Residence is in compliance.**

The District of Placement met the requirements of 34 *CFR* § 300.350(a)(1). The District of Placement provided the accommodations and supports in the student's June 19, 2006, ESY IEP, as evidenced in the use of overheads used for visual aids, individualized writing programs, no exams, assignments shortened, breaks given every 15 minutes, work given on a computer, FM trainer, AT assistance and extra software loaded in student's computer. **The District of Placement is in compliance.**

Adaptive PE

Evidentiary Findings of Fact:

22. The Complainant alleges in the July 31, 2006, complaint letter that. "APE Services were not provided to [student] because [District of Placement's school] did not have an APE teacher on the school campus, and also because an APE teacher had not been available or PKU trained."

23. The District of Residence's September 7, 2006, response states that,

> [Student's] APE services were scheduled to begin on Thursday, July 20, 2006 and were to be provided by [name], APE Teacher. [Student's school] did not have an available APE teacher over the summer, so the District arranged for one of its APE providers . . . to serve [student] ([APE name] was provided with the PKU training material. However, because [student's] placement at [school] ended earlier than anticipated (i.e. the day before APE services were scheduled to begin), APE services were not provided during the 2006 ESY. Once [student's school] placement was terminated, he completed the summer in his home

program, thus ESUY APE services were not provided because they did not extend beyond his school placement . . .

24. The District of Placement's September 25, 2006, response states that,

> Student was to receive APE services for 40 minutes per week, to be provided by [District of Residence]. Student was scheduled to begin receiving APE services on September 27 [*sic* July 27], 2006, however he stopped attending the [District of Placement's school] on September 26 [*sic* July 26]. After Student's last day at the [District of Placement's school], Student resumed his home program, pursuant to his IEP. Therefore, Student did not receive APE services.

25. The student's June 19, 2006, ESY IEP, identifies APE service will start July 12, 2006 and end August 3, 2006, weekly for 40 minutes. Page 40 indicates, "Adapted Physical Education services to be given by District DIS provider.

26. The investigator's September 18, 2006, on-site interview with District of Residence's administrators explained APE services were scheduled for July 26, 2006, one day after the student was told not to return to the District of Placement's school.

27. The investigator's September 19, 2006, on-site interview with District of Placement's administrator and staff responded APE services were not provided while the student attended the District of Placement's school.

Conclusion:

The District of Residence did not meet the requirements of 34 *CFR* § 300.350(a)(1). The Sending District did not provide APE services as mandated in the student's June 19, 2006, ESY IEP. **The ~~Sending District~~ District of Residence is out of compliance.**

Although the District of Placement terminated the student's placement, it was not responsible for providing the APE services according to the student's June 19, 2006, ESY IEP. **The District of Placement is in compliance.**

Placement

28. The Complainant alleges in the July 31, 2006, complaint letter that, "Because of [acting principal's] termination of [student's] placement at [student's school], [student] does not have an IEP that provides for a school placement at the beginning of the 2006-2007 school year."

29. The District of Residence's September 7, 2006, response states that,

> Page 41 of [student's] ESY IEP explains that the District was not placing [student] at [student's school] for the 2006-2007 school year; it also explains the agreed upon placement and services should the parties not agree to a Fall 2006 IEP. [District of Placement's school] was always a *trial placement* for the 2006 ESY. If the trial placement had proven appropriate, [student] may have stayed for the 2006-2007 school year, but the parties had agreed his 2006-2007 IEP would not be developed until this summer program was complete . . . [Student's] IEP team convened on Wednesday, August 30, to review [student's] 2006-2007 IEP and placement . . . As such, [student] does have a placement for the 2006-2007 school year . . .

30. The District of Placement's September 25, 2006, response states that,

> Student's diagnostic placement at [District of Placement's school] was to be for maximum of 11 days . . . After six days at the [District of Placement's school] , the District determined that his placement was unsuccessful, and thereafter notified . . . Student's Case Manager from [District of Residence], that his diagnostic placement was beginning terminated . . .

31. The student's June 19, 2006, ESY IEP guarantees the student will attend the District of Placement's school until August 3, 2006.

32. The student's June 19, 2006, ESY IEP (page 41), delineates,

> At present, the District has not presented an offer of FAPE for the 2006-2007 school year. As a result it is not clear whether [student] will continue to attend [District of Placement's school]. If [student] continues to attend [District of Placement's school] or if another school placement is agreed upon, then for stay put purposes all of the services set forth above shall continue, except for [student's 'Home Program' for the period 8/4/06 to 9/1/06 (i.e., 41.5 hour per week ACES ABA services). However, if there is no agreement of [student's] 2006-2007 IEP as to school placement, then [student's] Home Program shall continue until such time [student's] mother consents to the implementation of an IEP for the 2006-2007 IEP. Should that occur, then the District will continue to be obligated to provide all the other services set forth above, as well, except for those services identified on pages 37-41 . . .

33. The investigator's September 18, 2006, on-site interview with District of Residence's administrators and staff that they were notified by telephone on July 26, 2006, by the

District of Placement that the student could not return to the District of Placement's school.

34. The investigator's September 19, 2006, on-site interview with District of Placement's administrator revealed that the District of Residence was notified via telephone that the student could not return to the District of Placement's school because the student's activities were disruptive to the classroom program.

35. The parent's July 28, 2006, e-mail to the District of Residence's case manager describes the events that resulted in the student not being allowed to return to the ESY placement. She states that she is:

> . . . officially confirming that today was [student's] last day at [District of Placement's school], I write to memorialize the events of today. When I arrived at [District of Placement's school at 12 noon . . . you greeted me at the car window . . . and notified me that [District of Placement's administrator] had called [District of Residence's administrator] and . . . he left a voice mail that [student's] behavior was disruptive to other students in the classroom and therefore, [student's] last day would be today . . .

36. The investigator's September 19, 2006, on-site interview with the District of Placement's administrator confirms the District of Residence was notified on July 26, 2006, that this would be the student's last day and that he could not return to the school site.

37. The investigator's September 20, 2006, follow-up on-site interview with the District Residence confirms that it was notified via telephone by the District of Placement that the student could not return to the District of Placement's school.

38. The District of Residence's attorney's July 27, 2006, letter to the Complainant explains,

> . . . when I found out about [District of Residence's] termination of [student's] diagnostic placement last night, I intended to discuss when you were available . . . At this time, yes, [District of Placement] has informed the District it does not believe its program is appropriate for [student] and discontinued his diagnostic placement. The District Is conferring with [District of Placement] regarding why it does not believe [student] is appropriately placed in its program . . . the District recommends implementing [student's] implementing [student's] current IEP through the extended school year 2006 in the ongoing home program which is called for with [NPA and DIS providers in [student's] last weeks of summer. In addition, the District plans to reconvene in an IEP meeting the week of August 28, 2006 to finalize his fall placement . . .

39. The District of Residence's attorney July 28, 2006, letter to the Complainant further explains,

> As you know, [District of Placement] asked that [student] not return to [District of Placement's school] for the remainder of the 2006 Extended School Year. The District became aware of this on Tuesday [*sic* Wednesday] July 26, 2006.The District also informed [student's mother] of this on July 26, 2006 . . . given [District of Placement's] notice of unavailability, the District is implementing [student's] IEP through his home based program . . . Based upon our conversation yesterday, it is my understanding you are not in agreement with [District of Placement's school] terminating [student's] diagnostic placement . . .

40. 34 *CFR* § 300.501(c) requires that the District ensure that the parents are a member of any group that makes decisions on the educational placement of the student.

Conclusion:

The District of Residence did not meet the requirements of 34 *CFR* § 300.350(a)(1). The student's June 19, 2006, ESY IEP, requires that the student attend the District of Placement's school until August 3, 2006. The student's placement was terminated on July 26, 2006 by the District of Placement. The District of Residence did not ensure the parent was included in the student's change of placement.
The District of Residence is out compliance.

The student's June 19, 2006, ESY IEP, requires that the student attend the District of Placement's school until August 3, 2006. The student's placement was terminated on July 26, 2006 by the District of Placement. It was the responsibility of the District of Residence to ensure the parent was included in the student's change of placement.
The District of Placement is in compliance.

Daily logs

Evidentiary Findings of Fact:

41. The Complainant alleges in the July 31, 2006, complaint letter that,

> [Acting principal] and the classroom teacher . . . from preventing the NPA aides from collecting behavioral data and daily charting that is conducted as a part of their daily duties . . [Mother] was not provided with the daily logs and data kept by the NPA [behavioral] aides because [acting principal] and classroom teacher refused to allow them to collect the data and chart [student's] daily food intake required as a part of his PKU requirements in the IEP

42. The District of Residence's September 7, 2006, response states that,

> With regard to collection of behavioral data, [student's] IEP calls for daily behavioral logs. It does not specify a format through which these logs would be collected. NPA [behavioral] aides did take behavioral logs on the first two days of [student's] placement, July 20 and July 21.In addition, [student's] Case Manger took behavioral notes as to [student's] behaviors until the date his placement ended, July 26, and consistently discussed [student's] performance with his parent . . . NPA [behavioral] aides stopped taking data on July 24, 2006 because the NPA determined such collection was disruptive

43. The District of Placement's September 25, 2006, response states that,

> The aides that were to keep the daily logs pursuant to Student's IEP, were aides provided by a non-public agency . . . At no time did either [acting principal], or the classroom staff direct the NPS aides to stop collecting data. If the NPA [behavioral] aides determined that it was disruptive t take data in the classroom it was not based on direction from any District staff.

44. The student's June 19, 2006, IEP, (page 38) clarifies "Supplementary Aides & Services: Daily Logs," beginning July 20, 2006 and ending August 3, 2006, and take place daily at District of Placement's school and "[NPA] maintains Daily Logs of behavior and diet for parents."

45. The investigator's September 18, 2006, on-site interview with the NPA director explained the NPA aides were told by the NPA director to discontinue maintaining daily logs beginning July 24, 2006.

46. The NPA's July 27, 2006, letter to the District of Residence explains, ". . . my aides discontinued data collection as of Monday, 24 July, 2006 . . ."

47. The NPA's July 20, 21, 2006, aides' notes document the student's behavior and activities in the classroom.

48. The parent's July 25, 2006, e-mail to the District of Residence's case manager states, "This is the second day wherein I did not receive the daily behavioral log/notes from [NPA] in [student's] backpack . . ."

49. The District of Residence's July 21, 24, 25, 2006, case manager logs to the parent documents the student's behavior and activities in the classroom.

Conclusion:

The District of Residence did not meet the requirements of 34 *CFR* § 300.350(a)(1). The District of Residence did not ensure the NPA aides kept the daily logs on July 24 and 25, 2006, as mandated in the student's June 19, 2006, ESY IEP. **The District of Residence is out of compliance.**

Since the District of Residence employed the NPA aides to provide service to the student at the District of Placement's school, the District of Placement is not responsible for the actions of the NPA. **The District of Placement is in compliance.**

Transportation

50. The Complainant alleges in the September 14, 2006, e-mail to the investigator that the District of Residence has failed to reimburse the parent "for transportation costs as per the 7.17.06 ESY IEP. He alleges the parent has "experienced difficulty in securing the forms" and has sent an e mail on September 8, 2006, to the District regarding the reimbursement by the District of Residence has not responded.

51. The District of Residence's September 29, 2006, response states that,

> The District is reimbursing [student's] mother for her transportation of [student] to and from [District of Placement's school] on the days in which she chose to drive him, as opposed to allowing him take the bus. The paperwork has been sent to [student's] mother and reimbursement will issue as soon as the paperwork is processed.

52. The investigator's September 20, 2006, on-site interview with the District of Residence's administrator inquired about the reimbursement for transportation. The District explained the reimbursement forms are being processed.

53. The District of Residence's September 15, 2006, mileage reimbursement form is completed and signed by the Director. The form was sent to transportation on September 15, 2006.

54. The student's June 19, 2006, ESY IEP, requires that transportation will be reimbursed "to/from OT/SLP."

55. The investigator's September 28, 2006, telephone call to the complainant reveals the parent has not received the reimbursement form or the reimbursement itself.

Conclusion:

The District of Residence met the requirements of 34 *CFR* § 300.350(a)(1). The District of Residence's September 15, 2006, reimbursement form, signed by the Director, indicates transportation costs will be reimbursed to the parent as required in the student's June 19, 2006, IEP. **The District of Residence is in compliance.**

Since the District of Residence is responsible for the reimbursement of transportation costs to the parent, the allegation regarding transportation does not pertain to the District of Placement. **The District of Placement is in compliance.**

ALLEGATION TWO

Evidentiary Findings of Fact:

56. The Complainant alleges in the July 31, 2006, complaint letter that, "When [student's] placement at [District of Placement's school] was terminated, [acting principal] did not meet to discuss this matter with [student's] mother pursuant to state laws related to suspension and expulsion."

57. The District of Residence's September 7, 2006, response states that,

> . . . [student] was placed at [student's school] in a diagnostic trial placement pursuant to his 2006 ESY IEP. Unfortunately, on July 26, [student's school] informed the District they believed the trial was unsuccessful and [student's school] was terminating the placement. Accordingly, the District did not decide to change [student's] placement; [student's school] became unavailable to the District. Based upon this information, Case Manager, [name], told [parent] on that day at noon, that [District of Placement's school] had informed that the District [student's] placement would be terminated and he was not to return the next day. In addition, the next morning, counsel for the District, [name] wrote a letter to Parent's counsel, [name] confirming with him that [student's school] had terminated [student's] placement. In keeping with the parties' agreement that [student's] IEP, [District's counsel] suggested that [student] complete his remaining five days of school through his home program . . . [student's] IEP outlined [student] would remain in home school should the District not offer [student's school] in the Fall . . . Given the fact that [student] is a child who has been unilaterally home schooled by his mother for over 2 years and throughout that time the parties have been in dispute (and litigation) over returning him to school, it is also very unlikely a mutually satisfactory placement other than his home program would be achievable in five days . . . The District sent a prior written notice letter to parent's counsel indicating [student's] placement had been terminated . . . The District did not call an IEP meeting because the District and Parent were in agreement regarding how to finalize [student's] five days of school . . . In addition, Parent did not seek an IEP meeting to discuss [student] completing school at home because they agreed . . . the District acted

appropriately once they were notified by obtaining mutual consent to an alternate provision of services for five days.

58. The District of Placement's September 25, 2006, response states that,

> . . . Student's placement at the [District of Placement's school] was offered and accepted as a diagnostic placement for a maximum of 11 days. Regardless of whether Student's placement at the [District of Placement's school] was successful, the [District of Residence's] IEP team was to remeet [*sic*] to make an offer of placement and services for the 2006-2007 school year . . .

59. The student's June 19, 2006, ESY IEP (page 41), delineates,

> At present, the District has not presented an offer of FAPE for the 2006-2007 school year. As a result it is not clear whether [student] will continue to attend [District of Placement's school]. If [student] continues to attend [District of Placement's school] or if another school placement is agreed upon, then for stay put purposes all of the services set forth above shall continue, except for [student's 'Home Program' for the period 8/4/06 to 9/1/06 (i.e., 41.5 hour per week ACES ABA services). However, if there is no agreement of [student's] 2006-2007 IEP as to school placement, then [student's] Home Program shall continue until such time [student's] mother consents to the implementation of an IEP for the 2006-2007 IEP. Should that occur, then the District will continue to be obligated to provide all the other services set forth above, as well, except for those services identified on pages 37-41 . . .

60. The investigator's September 18, 2006, on-site interview with District of Residence's administrators and staff responded that they were notified on July 26, 2006, by the District of Placement that the student could not return to the District of Placement's school.

61. The investigator's September 19, 2006, on-site interview with District of Placement's administrator revealed that the District of Residence was notified via telephone that the student could not return to the District of Placement's school because the student's activities were disruptive to the classroom program.

62. The parent's July 28, 2006, e-mail to the District's case manager describes the events that transpired on July 26, 2006. She states that she is,

> . . . officially confirming that today was [student's] last day at [District of Placement's school], I write to memorialize the events of today. When I arrived at [District of Placement's school at 12 noon . . . you greeted me at the car window . . . and notified me that [District of Placement's

> administrator] had called [District of Residence's administrator] and . . . he left a voice mail that [student's] behavior was disruptive to other students in the classroom and therefore, [student's] last day would be today . . .

63. The investigator's September 19, 2006, on-site interview with the District of Placement's administrator confirms the District of Residence was notified on July 26, 2006, that this would be the student's last day and that he could not return to the school site.

64. The investigator's September 20, 2006, on-site interview with the District of Residence confirms that it was notified by the District of Placement the student could not return to the District of Placement's school.

65. The District of Residence attorney's July 27, 2006, letter to the Complainant explains,

> . . . when I found out about [District of Residence's] termination of [student's] diagnostic placement last night, I intended to discuss when you were available . . . At this time, yes, [District of Placement] has informed the District it does not believe its program is appropriate for [student] and discontinued his diagnostic placement. The District Is conferring with [District of Placement] regarding why it does not believe [student] is appropriately placed in its program . . . the District recommends implementing [student's] current IEP through the extended school year 2006 in the ongoing home program which is called for with [NPA and DIS providers in [student's] last weeks of summer. In addition, the District plans to reconvene in an IEP meeting the week of August 28, 2006 to finalize his fall placement . . .

66. The District of Placement attorney's July 28, 2006, letter to the Complainant further explains:

> As you know, [District of Placement] asked that [student] not return to [District of Placement's school] for the remainder of the 2006 Extended School Year. The District became aware of this on Tuesday [*sic* Wednesday] July 26, 2006.The District also informed [student's mother] of this on July 26, 2006 . . . given [District of Placement's] notice of unavailability, the District is implementing [student's] IEP through his home based program . . . Based upon our conversation yesterday, it is my understanding you are not in agreement with [District of Placement's school] terminating [student's] diagnostic placement . . .

67. 34 *CFR* 300.503(a)(1) establishes that a:

> Written notice that meets the requirements [described below] must be given to the parents of a child with a disability a reasonable time before the public agency—(i) Proposes to initiate or change the identification, evaluation, or education placement of the child or the provision of FAPE to the child;

Conclusion:

The District of Residence did not meet the requirements of 34 *CFR* § 300.503(a)(1). The student's placement was terminated on July 26, 2006 by the District of Placement and the District of Residence was notified via telephone the same day. The student's June 19, 2006, ESY IEP, requires that the student attend the District of Placement's school until August 3, 2006. The District of Residence did not provide written notice to the parent in a reasonable time prior to changing the placement of the student.
The District of Residence is out of compliance.

The student's placement was terminated on July 26, 2006 by the District of Placement and the District of Residence was notified via telephone the same day. The student's June 19, 2006, ESY IEP, requires that the student attend the District of Placement's school until August 3, 2006. When the District of Placement notified the District of Residence on July 26, 2006, that the student could not return to school it was the responsibility of the District of Residence to provide written notice to the parent in a reasonable time prior to allowing the student's change of placement.
The District of Placement is in compliance.

ALLEGATION THREE

Evidentiary Findings of Fact:

68. The Complainant alleges in the July 31, 2006, complaint letter that,

> [Student] was placed in a non-severe special day class at [student's school]. [Teacher #1] was identified as the general education teacher, and teacher, [Teacher #2] was introduced as the special education teacher. It is believed that both teachers are not credentialed special education teachers.

69. The District of Residence's September 7, 2006, response states that, "The District placed [student] at [District of Placement] at Parent's request with the understanding that all teachers in [District of Placement] were credentialed. The District defers to [District of Placement] in regard to the credential of its teachers."

70. The District of Placement's September 25, 2006, response states that,

> . . . [Teacher #1] was the general education teacher assigned to Student. Please find a copy of his credential attached . . . [Teacher #2] was the special education teacher assigned to Student. Please find a copy of her Emergency Level 1 Education Specialist Credential, Professional Clear Specialist Instruction Credential (Reading), Clear Multiple Subject Teaching Credential, Clear Cross-cultural, Language and Academic Development Certificate, attached . . .

71. The student's June 19, 2006, ESY IEP, requires a "Non Severe/Special Day Class (SDC)" with placement in a "Special Day Class – Integrated Facility" 100% of the time.

72. The investigator's September 19, 2006, on-site interview with District of Placement's administrator revealed that he had received the student's June 19, 2006, ESY IEP two days prior to the student arriving at the District of Placement's school.

73. The general education teacher's October 15, 2005, teaching credential expires on November 1, 2010.

74. The special education teacher's August 2, 2005, emergency education specialist's credential expired on August 11, 2006.

75. The parent's July 28, 2006, e-mail to the case manager confirms the student's last day at the District of Placement's school was July 26, 2006.

76. 20 *United States Code* (*USC*) § 1401 (10)(B) establishes:

> REQUIREMENTS FOR SPECIAL EDUCATION TEACHERS.—When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means that . . . (ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis . . .

Conclusion:

The District of Residence did not meet the requirements of 5 *CCR* § 3053(c). The District of Residence is responsible for placing students with properly credentialed teachers. The District of Residence placed the student in the District of Placement's school with a teacher who was not properly credentialed.
The District of Residence is out compliance.

The District of Placement did not meet the requirements of 5 § *CCR* 3053(c). Two days prior to the student's arrival, the District of Placement received the student's IEP. The District of Placement allowed the student to be instructed by the special education specialist, who's emergency credential did not meet the requirements mandated by 5 § *CCR* 3053(c) and which was abrogated by 20 *USC* § 1401 (10)(B). **The District of Placement is out of compliance.**

ALLEGATION FOUR

Evidentiary Findings of Fact:

77. The Complainant alleges in the July 31, 2006, complaint letter that, "When [student's] attendance at [student's school] was terminated by [acting principal], a manifestation determination hearing was not scheduled. [Student] was essentially expelled from school for behavior that is a manifestation of his disability."

78. The Sending District's September 7, 2006, response states that,

> [Receiving District] and the District were not disciplining [student]. Neither agency was suspending or expelling [student] – and the District certainly was not excluding him form school. In fact, [student] didn't miss one day of instruction. The day after [District of Placement] notified the District it was terminating [student's] trial placement, the District inform Parent that [student's] remaining five days of school . . . would be implemented in his home program and arranged for his home program behavioral provider to be available. . . . the District implemented his IEP through his home program the very next morning - his removal was for not more than 10 school days, thus a manifestation determination was not necessary. A special education student may be excluded from school for up to 10 days in a school year without a manifestation determination . . . a manifestation was not required.

79. The District of Placement's September 25, 2006, response states that,

> . . . an IEP team meeting was not scheduled after Student's diagnostic placement was terminated, nor was a meeting held related to Student's suspension or expulsion. First, Student was neither expelled from the [District of Placement's school], nor suspended. Rather, his 11-day diagnostic placement was terminated 5 days early, as it was determined that it was an unsuccessful placement for him. An IEP team meeting was not scheduled directly after Student's diagnostic placement was terminated because his June 19 and July 17, 2006, IEP already provided for his placement and services for the remainder of the 2006 ESY. His home program was reinstated the day after his placement at the [District

of Placement's school] was terminated. He did not miss a single day of services pursuant to his IEP.

80. The student's June 19, 2006, ESY IEP, explains the student's "end date" at the District of Placement's school is August 3, 2006.

81. The parent's July 28, 2006, e-mail to the case manager confirms the student's last day at the District of Placement's school was July 26, 2006.

Conclusion:

The District of Residence met the requirements of 20 *USC* 1415(k)(1)(E). There is no evidence the student was expelled or suspended from the District of Placement's school due to his behavior. The student's placement was terminated on July 26, 2006, because of his activities. The termination caused the student to miss the last remaining six days of school. **The District of Residence is in compliance.**

The District of Placement met the requirements of 20 *USC* 1415(k)(1)(E) There is no evidence the student was expelled or suspended from the District of Placement's school due to his behavior. The student's placement was terminated on July 26, 2006, because of his activities. The termination caused the student to miss the last remaining six days of school. **The District of Placement is in compliance.**

REQUIRED CORRECTIVE ACTIONS:

ALLEGATION ONE, TWO AND THREE

1. On or before November 30, 2006, the District of Residence and District of Placement shall send a memorandum to all **applicable** District **administrators and** special education ~~administrators and~~ staff, ~~and stakeholders~~ **that worked with the student, i.e. case manager, teachers, NPA providers, service providers, etc.** The memo shall include: (1) the text of 34 *CFR* § 300.350(a)(1), 34 *CFR* § 300.503(a)(1), 5 *CCR* 3053(c) and 20 *USC* § 1401 (10)(B).and the directive for staff to comply. Acceptable evidence would include a copy of the memorandum with the required components.

2. By December 31, 2006, the District of Residence shall ~~hold special education training for the Director of Special Education, but not limited to the understanding and writing of an IEP and prior written notice requirements. Acceptable evidence would include a copy of the training agenda and the sign in sheets.~~ **provide evidence that the Director of Special Education has participated in the following areas of training: 1) the sole use of approved special education local plan area (SELPA) IEP forms; 2) all recommendations and decisions made by the IEP team are to be documented on the IEP; 3) all parties involved with the**

student's educational program will be included in the IEP process and will document their participation with their signature on the IEP. Acceptable evidence would include a copy of the training agenda and verification that training has been completed.

3. By November 30, 2006, the District of Residence shall provide compensatory services for a minimum of 24 hours of missed ~~curriculum~~ **English language arts** instruction **that would have been provided to the student had he remained in the District of Placement** and eighty minutes of APE service. The District of Residence will send the complainant and parent a letter memorializing the 24 hours of curriculum instruction and eighty minutes of APE service. Acceptable evidence would include a copy of the compensatory service offer letter sent to the Complainant and parent, including frequency, duration and location.

OVERALL

By December 31, 2006, the District of Residence shall submit evidence that the governing board of the local education agency has addressed all issues of noncompliance outlined in this report at a regularly scheduled public hearing, pursuant to *EC* § 56045. Acceptable evidence would be a copy of the governing board's agenda and minutes reflecting the presentation of this report to an open session of the school board.